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Noteworthy:

“[I]t addresses their concern in committee and ours, the unprecedented filibuster on the floor. And it sticks with the principle of fairness but also the principle that these nominees get an up or down vote and we do our duty as United States Senators.”

-Senator Frist, Fox News’ “Special Report,” 4/28/05

In 1997, it was Joe Biden that said everyone ought to have a vote. They ought to have a vote in committee and a vote on the floor. That's absolutely true, a quote from Joe Biden in 1997. And the fact is before last year we didn't filibuster judges in the United States Senate. We didn't filibuster circuit court judges. In 1995, the last time there was an opportunity to vote on the filibuster, it was 19 democrats to who voted to end the filibuster.

-Senator Coleman, CNN “Wolf Blitzer” 4/28/05

A Compromise on the Nuclear Option,
Washington Times
4/29/05

Senate Majority Leader Bill Frist yesterday offered Democrats a compromise in the stalemate over President Bush's judicial nominations. In exchange for saving the filibuster, the proposal would guarantee debate on each nominee on the Senate floor for

up to 100 hours, allowing each senator to voice his or her opinion for the record. Also, all the nominees for the federal appellate courts and Supreme Court would be allowed an up-or-down vote in the Senate, and nominees could no longer be blocked from reaching the Senate floor in the Judiciary Committee -- a tactic Republicans used to their advantage during the Clinton administration. Elsewhere in the Editorial section, Mr. Frist discusses his proposal in greater detail.

It's a proposal Senate Democrats won't likely accept at face value. Senate Minority Leader Harry Reid was, in fact, quite blunt: "It's a big wet kiss to the far right." Mr. Reid didn't exactly rule out the proposal, but in typical minority-leader speak said that he would have to look at it further. That means that Mr. Reid and Co. will take time to decide if the proposal is a politically viable solution to the judicial-nomination impasse, of which no one's quite sure who holds the high ground with the American people.

Both sides have been threatening to use their ultimate trump card -- but neither side is particularly confident enough to do so. For the Republicans, that means the ill-named "nuclear option," and for the Democrats, that means shutting down the Senate.

But as a matter of policy, Mr. Frist's proposal seems quite reasonable. It addresses the issue of constitutional interpretation, which has always been the heart of the matter. Earlier this week, Mr. Reid offered to allow an up-or-down vote on a few of the 10 filibustered appellate-court nominees -- an offer Mr. Frist rightly rejected. It has been our view that the Constitution's "advise and consent" role for the Senate on presidential nominations does not include obstruction as an appropriate option. Mr. Reid's proposal treats the controversy as a game of "tit for tat," when it should be regarded as matter of interpretation. And the reality is that both sides have abused whatever loopholes are available to go far beyond what the Constitution originally intended. Mr. Frist's proposal is a reasonable remedy that would end the abuse down the road.

If the Democrats reject Mr. Frist's option, then the Republicans could justifiably paint them as obstructionists -- not, as Mr. Reid has tried to argue, defenders of the Constitution. What we might be witnessing is the start of a Republican campaign to isolate the Democrats in the court of public opinion, and that could go a long way come 2006.

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Debate and then Vote
By Senator Frist
Washington Times, 4/29/05

The American people elect their senators to do a job. Although the Senate is often called the world's greatest deliberative body, each senator's job, especially when it comes to judicial nominees brought to the Senate floor, is to vote. This is a matter of fairness. And it's a matter of constitutional duty. The Senate can confirm or reject nominees. But, at the end of debate, senators should do their job and give judicial nominees the courtesy of a vote.

In the last Congress, the president submitted 34 appeals court nominees to the Senate. A minority of senators blocked up-or-down votes to 10 of those nominees and threatened to deny votes to another six. This was unprecedented in 214 years of Senate history. Now, in the new Congress, the same minority of senators says it will continue its

campaign of judicial obstruction. And, even worse, if they don't get their way, they threaten to shut down the Senate and obstruct government itself.

Judicial obstruction creates many problems: It keeps the president and the Senate from filling court vacancies; it clogs the nation's courts with cases and appeals; and it denies senators their right to vote on nominees. It simply cannot be allowed to continue. So, in the spirit of civility, I propose an agreement that ensures up-or-down votes on judicial nominees after fair and open debate. It's a compromise that holds to constitutional principles and that I sincerely hope is accepted as a solution.

To begin with, we must acknowledge that the bitterness many feel over the Senate's failure to confirm judges did not begin two years ago. Since the 1980s, the battles over judicial confirmation have intensified each year. In the past, Republican and Democratic majorities alike, refused to vote controversial nominees out of committee or even schedule hearings. Whether on the floor or in committee, judicial obstruction is judicial obstruction.

It's time for judicial obstruction to end no matter which party controls the White House or the Senate. The judiciary committee will continue to play its essential oversight and investigative roles in the confirmation process, but every senator should have the opportunity to confirm or reject judicial nominees with up-or-down votes on the floor.

Second, my Democratic colleagues have asked for more time to debate nominees on the floor. I think they should have it. The work of confirming judges to appeals courts and the Supreme Court ranks among the Senate's most consequential duties. Judicial nominees should be fairly and thoroughly vetted before the American people. I believe that up to 100 hours would allow sufficient time for all senators to debate and express their opinions. Once every senator has had the opportunity to speak, the Senate as a whole should speak with an up-or-down vote.

Third, these proposals should apply only to nominees to appeals courts and the Supreme Court. Judges who serve on these courts hold the awesome responsibility of interpreting the Constitution. So far, Democrats have denied votes only to appeals court judges. I sincerely hope that they do not intend to escalate judicial obstruction to future Supreme Court nominees. I hope this offer will make that unnecessary.

Finally, the minority of senators who have obstructed votes on judicial nominees have expressed concerns that their ability to block bills may be curbed. As majority leader, I will guarantee that power will be protected. The filibuster as it existed before its unprecedented use on judicial nominees in the last Congress will remain unchanged.

The debate over judges is about constitutional principles. It's about fairness to nominees. It's about senators doing their job and what's right for the Senate and for the country. Arbitrarily voting on just a few judicial nominees, as some have proposed, will fail to restore the Senate's 214-year practice of up-or-down votes for all judicial nominees that come to the floor. Senators have a duty to vote on these judicial nominees. The Senate can confirm them or deny them, but they at least deserve the courtesy of a vote.

EDITORIAL: Advise and Consign

The filibuster isn't the only procedure Senators are abusing.

The Wall Street Journal, 4/29/05

With a showdown looming over the filibuster of judicial nominees, now is the time to point out another abuse of the Senate's "advise and consent" power. It's called the "hold," whereby an individual Senator can delay indefinitely a Presidential nomination, and it is seriously interfering with the operation of the executive branch.

Call it every Senator's personal "nuclear option." If he doesn't like a nominee or, more likely, doesn't like a policy of the agency to which the nominee is headed, all he has to do is inform his party leader that he is placing a hold on the nomination. Oh--and he can do so secretly, without releasing his name or a reason.

Like the filibuster, the hold appears nowhere in the Constitution but has evolved as Senators accrete more power to themselves. Senate rules say nothing about holds, which started out as a courtesy for Members who couldn't be present at votes. Oregon Democrat Ron Wyden has said holds are "a lot like the seventh-inning stretch in baseball. There is no official rule or regulation that talks about it, but it has been observed for so long that it has become a tradition."

Also like the filibuster--which was never intended to block judicial nominees from getting a floor vote--the hold is being abused by a willful minority of Senators. This being a Republican Administration, Democrats in particular are using it now to hamstring or stop its ability to govern. There's no formal list of holds, but the current batch may well be unprecedented in both in number and degree. Here's our unofficial list:

- Rob Portman, U.S. Trade Representative. The Senate Finance Committee unanimously backed the former Congressman this week. But don't expect a floor vote soon. Indiana Democrat Evan Bayh has placed a hold on his nomination in hopes of forcing a vote on a protectionist bill he favors on trade with China. (Think AFL-CIO and the 2008 Presidential nomination.) Meanwhile, it looks like Mr. Portman will miss a high-level meeting next week in Paris to jump-start trade talks.
- Stephen Johnson, head of the Environmental Protection Agency. Senator Tom Carper says Mr. Johnson "is qualified to head the EPA and would serve the agency well." Yet the Delaware Democrat placed a hold on him over a dispute regarding the Administration's Clear Skies program, regulating pollutants in the air. Mr. Johnson dodged an earlier bullet when California Democrat Barbara Boxer threatened a hold unless the EPA canceled a study of infants' exposure to home pesticides. Mr. Johnson, who is acting EPA head, canceled the program.
- Lester Crawford, Food and Drug Administration Commissioner. The sticking point here is Plan B, aka the morning-after pill. Democrats Hillary Clinton and Patty Murray want Plan B sold over the counter and say that the agency is stalling. They say they won't lift their hold until the FDA makes a decision.
- Tim Adams, Undersecretary of the Treasury for International Affairs. The person in this position is responsible for, among other critical issues, the Chinese yuan and the World Bank. But Democrat Max Baucus has higher priorities--namely, trade with Cuba. He objects to a legal ruling by an obscure arm of the Treasury that requires advance payment by Havana for purchases of U.S. agricultural products such as grain from the Senator's home state of Montana. There are six more Treasury positions open--including those responsible for tax policy, Fannie Mae and terrorist financing. Mr. Baucus promises holds on all of them. The Senator realizes he can't win a vote in Congress on his Cuba problem, so he's resorting to this nomination extortion.
- Defense Department. Where to begin? With a war on, you'd think Senators would want to keep the Pentagon fully staffed. But John McCain, angry over the Air Force's tanker-leasing deal with Boeing, last year put holds on numerous Defense nominees, including two candidates for Army

Secretary, the comptroller and the assistant secretary for public affairs, the long-serving Larry DiRita. Now that Mr. McCain's personal punching bag, Air Force Secretary Jim Roche, has left the Pentagon, the Arizona Republican has calmed down--though not enough to lift his hold on Michael Wynne as Undersecretary for Acquisition. President Bush gave Mr. Wynne a recess appointment last month.

Meanwhile, Democrat Carl Levin has a hold on Peter Flory, who was nominated almost a year ago as Assistant Secretary for International Security Policy. Mr. Flory has the misfortune to work for Undersecretary Douglas Feith, whom Senator Levin has pursued like Ahab chasing Moby Dick. So Mr. Flory gets harpooned, too.

Until Wednesday, John Paul Woodly was blocked as Assistant Secretary of the Army for Civil Works by Alabama's two Republican Senators. Jeff Sessions and Richard Shelby said Washington favored Georgia in a decade-long dispute over water rights. (We're not making this up.) And in March, Mississippi Republican Trent Lott placed a hold on the chairman of the Base Closing Commission, which he feared might shut a military facility in his home state. The President again had to use recess appointments to name all nine members in April.

Once upon a time in America, such policy disputes were settled in elections or with votes in Congress. But in today's permanent political combat, Senators wage guerrilla warfare against the executive. No wonder so few talented people want to work in Washington. Senator Wyden and Republican Charles Grassley plan to re-introduce legislation next month to kill holds that are secret. Better yet would be to get rid of all Senate holds.